

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Sagebrush Cellular, Inc.  
Designated Eligible Carrier  
Application**

**Case No. PU-07-672  
Filed 09/14/07**

**ORDER**

**December 31, 2007**

On September 14, 2007, Sagebrush Cellular, Inc. (Sagebrush) of Scobey, Montana filed an Application for Designation as an Eligible Telecommunications Carrier (ETC) and Petition for Redefinition of Service Areas of Rural Telephone Companies for the purpose of receiving federal universal service support in the area shown by the attached map. Sagebrush supported its application with the pre-filed, sworn testimony of Mr. Shawn Hanson, General Manager of Sagebrush and ten exhibits including letters of Nemont Telephone Cooperative, Inc. and Missouri Valley Communications, Inc., the incumbent local exchange carriers (ILECs) providing service in the affected area, supporting Sagebrush's application.. Sagebrush is a wholly-owned subsidiary of Nemont Telephone Cooperative, Inc. Sagebrush offers wireless services in Montana and North Dakota. Sagebrush proposes to provide universal services as a Commercial Mobile Radio Service carrier utilizing its own personal communications service facilities and some leased facilities.

On October 24, 2007 the Commission issued a Notice of Opportunity for Hearing providing until November 30, 2007 for receiving written comments or requests for hearing. No comments or requests for hearing were received.

The Notice identified the following issues to be considered:

1. Qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.
2. The ETC universal service support area to be designated for the applicant.
3. The public interest.

On December 6, 2007 Sagebrush filed an affidavit (with exhibits) of Shawn Hanson, General Manager of Sagebrush and its parent company Nemont Telephone Cooperative, Inc., in support of the application.

On December 14, 2007 Sagebrush filed a second affidavit (with exhibits) of Shawn Hanson in support of the application.

On December 14, 2007 Sagebrush filed a copy of the July 25, 2007 letter by Arvin Larson, President of Northwest Communications Cooperative, in support the application.

On December 14, 2007 the Commission held an Informal Hearing to discuss these matters with the applicant and Commission staff.

The Commission makes the following findings concerning Sagebrush's request for ETC Designation:

### ***ETC Designation***

Sagebrush is a Commercial Mobile Radio Service common carrier licensed by the Federal Communications Commission (FCC) to provide wireless personal communications service to the area in North Dakota for which Sagebrush seeks designation as an eligible telecommunications carrier.

The Telecommunications Act of 1996 (Act) provides for financial support to a common carrier that (1) offers the services established by the FCC to be supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services ; (2) advertises the universal services, advertises the availability of such services, and advertises the charges for such services, using media of general distribution ; and (3) is designated as an ETC. An ETC must use that financial support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

To be designated as an ETC, the carrier must (1) under Code of Federal Regulations (CFR) Part 47 Subpart B, offer to telecommunications customers each of the services and functionalities designated for Universal service support ; (2) under CFR Part 47 § 54 .405, make available Lifeline service to qualifying low-income consumers; (3) under CFR Part 47 § 54 .411, make available Link Up service to qualifying low-income consumers ; 4) under CFR Part 47 Subpart F, provide services supported by universal service support mechanisms to eligible schools and libraries ; and (5) under CFR Part 47 Subpart G, provide services supported by universal service support mechanisms to eligible health care providers.

For telecommunications customers, the services designated by the FCC for support by Universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll blocking or toll limitation for qualifying low-income consumers.

For schools and libraries, the services designated by the FCC for support by universal support mechanisms include all items listed on the Eligible Services List of the Schools and Libraries Support Mechanism of the Universal Service Administrative Company dated October 18, 2002. For health care providers, the services supported by universal service support mechanisms include any telecommunications service that is used primarily for the provision of health care.

Sagebrush certifies that it will provide all the services and functionalities designated by the FCC for support by Universal service support mechanisms for

telecommunications customers including Link-Up and Lifeline, and the services and functionalities designated by the FCC for support by Universal service support mechanisms for schools and libraries and for health care providers.

Sagebrush affirms that it will advertise the availability of the supported services, and the charges for those services, using media of general distribution throughout the area(s) requested for designation.

Sagebrush certifies that it will comply with the service level requirements under North Dakota Administrative Code § 69-09-05-12(3).

Sagebrush certifies that it is able to remain functional in emergency situations, including a reasonable amount of backup power to ensure functionality during commercial power outages. Sagebrush can quickly repair damaged facilities and has the capability to manage traffic spikes resulting from emergency situations.

Sagebrush certifies that it will satisfy applicable consumer protection and service quality standards, including a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

Sagebrush demonstrated that it offers a local usage plan comparable to the one offered by the incumbent LEC in the proposed designated service area. Sagebrush's application included a copy of its price schedule setting forth rates, terms and conditions of its universal service and other service offerings including Link-Up and Lifeline services.

Sagebrush certifies that it acknowledges the Commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed designated service area. Sagebrush also certifies that it acknowledges that the FCC may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed designated service area.

Both federal law and state law provide authority for the Commission to designate a common carrier as an ETC.

The Commission finds Sagebrush is qualified under Section 214(e) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, for designation as an eligible telecommunications carrier for receiving federal universal service funding for the proposed designated service area.

The Commission makes the following findings concerning a geographic area (service area) with respect to Sagebrush's request for ETC Designation:

### **Service Area**

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. § 214(e)(5) defines service area:

(5) **SERVICE AREA DEFINED**-- The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Sagebrush is licensed by the FCC to provide commercial mobile radio services in submarket 2, of Basic Trading Area 299 (BTA 299) which consists of Divide County, North Dakota. Sagebrush is also licensed by the FCC to provide CMRS services in BTA 476 which includes Williams and McKenzie Counties in North Dakota. Sagebrush has requested designation as an ETC in Divide County and Williams County, North Dakota. The ILCs serving Divide and Williams Counties are Northwest Communications Cooperative, Nemont Telephone Cooperative, Inc. and Missouri Valley Communications, Inc. All three ILECs support Sagebrush's application for designation as an ETC in the area proposed to be designated.

Nemont Telephone Cooperative Inc., Sagebrush Cellular, Inc., and Missouri Valley Communications, Inc. do business as Nemont.

To be designated as an ETC, an applicant is required to provide universal service throughout rural "study areas", which are defined to be the same as rural service areas.

For purposes of federal universal service funding, the study areas established by the FCC and listed by the Universal Service Administrative Company for the ILECs serving in Divide County and Williams County include:

<b>Study Area Name</b>	<b>Included Incumbent Local Exchange Carriers</b>
Nemont Telephone Cooperative, Inc. - ND	Nemont Telephone Cooperative, Inc. Missouri Valley Communications, Inc
Northwest Communications Cooperative	Northwest Communications Cooperative, a Cooperative Association

Since the boundaries of the proposed designated ETC service area correspond to the Nemont Telephone Cooperative, Inc.-ND study area, no redefinition of that study area is necessary. However, since the boundaries of the Northwest Communications Cooperative study area, e.g. Divide and Williams Counties, do not correspond with the requested designated ETC service area boundaries, it is necessary to redefine, under CFR Part 47 § 54 .207(c), the ETC service area that will be designated for Sagebrush. Sagebrush's requested service area includes the following wire centers:

<b>Study Area Name</b>	<b>Wire Centers Included in Sagebrush Proposed Designated Service Area</b>
Nemont Telephone Cooperative, Inc. - ND	Ambrose, Fortuna, East Westby, Williston
Northwest Communications Cooperative	Alamo, Crosby, Epping, Grenora, Marmon, McGregor (portion of), Noonan (portion of), Ray, Round Prairie, Tioga (portion of), Wildrose

<b>Study Area Name</b>	<b>Wire Centers NOT Included in Sagebrush Proposed Designated Service Area</b>
Northwest Communications Cooperative	Bowbells, Columbus, Flaxton, Lignite, Powers Lake

The McGregor, Noonan and Tioga wire centers extend outside the Sagebrush proposed designated ETC service area.

The Act and the FCC's regulations authorize the FCC and the Commission to act in concert to develop an alternative service area standard for areas served by rural telephone companies in accordance with CFR Part 47 § 54 .207(c)-(d). In defining a service area other than a study area, we are required to take into account three factors: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.<sup>1</sup>

The first factor is the risk that a competitor would selectively target service only to the low cost areas of a rural incumbent LEC's study area. Sagebrush proposes to serve all of the area within Northwest Communications Cooperative's study area that is also within Sagebrush's licensed spectrum. Sagebrush already serves the lowest cost exchange, Williston, and now seeks to expand its coverage to higher cost areas within its licenses spectrum area. The present application for ETC status permits Sagebrush to serve more rural communities. We find that Sagebrush's commitment to provide universal service throughout the proposed designated service area minimizes concerns regarding cream skimming. We find no evidence in this proceeding of rural cream skimming effects in redefining the service area requirement as requested by Sagebrush.

The second factor to consider is the regulatory status enjoyed by rural telephone companies under the Act. Sagebrush states that the redefinition of the rural telephone company service areas will not compromise or impair the unique treatment of the rural companies under Section 251(f) of the Act. Northwest Communications Cooperative will retain the statutory exemptions from interconnection, unbundling and resale requirements under Section 251(c). No evidence in this proceeding regarding the regulatory status enjoyed by rural telephone companies under the Act leads us to

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service ; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, adopted December 31, 2003, released January 22, 2004 (Virginia Cellular ETC Order).

conclude that Sagebrush's request for redefined study area requirements should not be granted.

The third factor to consider is whether any administrative burdens might result from the redefinition of the service area requirement. Sagebrush contends that there are no administrative costs to consider because any federal universal service support available to a competitive ETC in areas served by Northwest Communications Cooperative would be determined based on the per-line support available to the rural telephone company itself.

The Commission's action to redefine the service area requirement as requested by Sagebrush is necessary to facilitate the granting of the federal ETC in the areas of the rural telephone companies' service areas that fall within Sagebrush's FCC licensed Commercial Mobile Radio Service coverage area.

The redefinition requested by Sagebrush does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis. No evidence in this proceeding regarding administrative burdens for rural telephone companies leads us to conclude that Sagebrush's request for redefined study area requirements should be denied.

### ***Public Interest***

In areas served by a rural telephone company, the Commission must find that designating an additional ETC serves the public interest in accordance with 47 U.S.C. § 214(e)(2). Sagebrush states that designation in the areas served by Nemont, Missouri Valley and Northwest Communications Cooperative will serve the public interest because competition will be facilitated between landline and wireless service and also among wireless services within the affected study area. Sagebrush states that it will be able to provide universal service on a more competitively neutral basis with access to universal service funding to support to enhance and extend wireless network infrastructure and ensure networks will be available to deliver services to consumers. Increased competition can be expected to lead to better service and the provision of new, innovative services. Sagebrush services will provide to consumers the benefits of mobility, larger calling areas, and where requested by the Public Safety Answering Point, GPS location assistance for customers dialing 911. Further, Sagebrush states that designation will not adversely or otherwise threaten the provision of universal services by the rural telephone companies as the rural companies will not lose universal service support if they lose lines to a competitor.

The Commission finds that designating Sagebrush as an ETC is in the public interest because it will enable Sagebrush to bring new services, new technologies and a choice of universal service providers to customers of North Dakota's rural telephone companies.

Based on the evidence in this proceeding, Sagebrush is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to


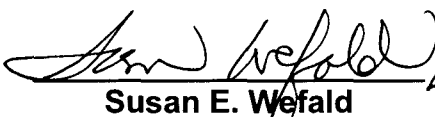
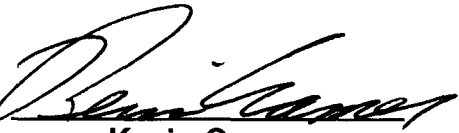
receive federal universal service funding and it is in the public interest Sagebrush be designated as an ETC in the requested designated service area.

### **Order**

The Commission Orders:

1. Sagebrush Cellular, Inc. is designated as an eligible telecommunications carrier in the service area requested conditioned on Federal Communications Commission approval of the requested redefined study area requirements under 47 CFR § 54.207(c).

### **PUBLIC SERVICE COMMISSION**

		
Tony Clark Commissioner	Susan E. Wefald President	Kevin Cramer Commissioner

# Sagebrush Requested ETC Area

